

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: Videotape  
NEURONTIN MARKETING, SALES : Deposition of:  
PRACTICES AND PRODUCTS :  
LIABILITY LITIGATION : MICHAEL TRIMBLE

THIS DOCUMENT RELATES TO:

Smith, et al. v Pfizer, et al.

Case No. 05-cv-11515-PBS

9

10

TRANSCRIPT of testimony as taken by and before PATRICIA A. SANDS, a Shorthand Reporter and Notary Public of the States of New York and New Jersey, at the offices of Lanier Law Firm, 126 East 56th Street, New York, New York, on Tuesday, September 2, 2008, commencing at 9:15 in the forenoon.

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	Page 2		Page 4
1 APPEARANCES:		1 EXHIBITS, continued.	
2		2	
3 FINKELSTEIN & PARTNERS		3 NUMBER	DESCRIPTION
4 436 Robinson Avenue		4	TRIMBLE
5 Newburgh, New York 12550		5	
6 BY: ANDREW G. FINKELSTEIN, ESQ.		6	Exhibit 10 Expert reports 128
7 For the Plaintiff		7	Exhibit 11 Gabapentin papers 129
8 800 634-1212		8	Exhibit 12 Questionnaire 130
9 THE LANIER LAW FIRM		9	Exhibit 13 Re GABA receptors 132
10 Tower 56		10	Exhibit 14 PubMed article 134
11 126 East 56th Street, 6th Floor		11	Exhibit 15 Questionnaire 140
12 New York, New York 10022		12	Exhibit 16 APA Guidelines 214
13 BY: KENNETH SOH, ESQ.		13	Exhibit 17 Cato's medical records 286
14 For the Plaintiff		14	Exhibit 18 McComb's records 311
15 212 421-2800		15	
16 SHOOK, HARDY & BACON, LLP		16	
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18 Kansas City, Missouri 64108-2613		18	
19 BY: LORI CONNORS McGRODER, ESQ.		19	
20 For the Defendant		20	
21 816 474-6550		21	
22		22	
23		23	
24		24	
25		25	
	Page 3		Page 5
1	INDEX	1	PROF. MICHAEL TRIMBLE,
2		2	Institute of Neurology
3		3	Queen Square
4 WITNESS	DIRECT	4	London WC1N3CB,
5 PROFESSOR MICHAEL TRIMBLE		5	having been sworn, was examined
6		6	and testified as follows:
7 Ms. McGroder	6	7	THE VIDEO OPERATOR: Please standby.
8		8	We are on the record. My name is
9 EXHIBITS		9	Adam DiCola of Veritext Services. The
10		10	date today is September 2, 2008, and the
11 NUMBER	DESCRIPTION	11	time is approximately 9:15 a.m.
12 TRIMBLE		12	This deposition is being held in the
13		13	office of Lanier Law Firm, located at 126
14 Exhibit 1	Declaration	14	East 56th Street, New York, New York.
15 Exhibit 2	Aid memoir	15	The caption of this case is Smith et
16 Exhibit 3	Fromson letter	16	al., versus Pfizer, et al., in the United
17 Exhibit 4	Table 15 & pg 37 of report	17	States District Court, District of
18 Exhibit 5	Table 7.20	18	Massachusetts. Case number
19 Exhibit 6	Graphic	19	05-cv-11515-PBS.
20 Exhibit 7	Article	20	The name of the witness is Michael
21 Exhibit 8	Literature	21	Trimble.
22 Exhibit 9	Notes	22	At this time the attorneys will
23		23	identify themselves and the parties they
24		24	represent, after which our court reporter,
25		25	Patricia Sands, will swear in the witness

2 (Pages 2 to 5)

VERITEXT CORPORATE SERVICES (800) 567-8658

<p style="text-align: right;">Page 6</p> <p>1 and we can proceed.</p> <p>2 MR. FINKELSTEIN: Andrew Finkelstein, 3 Finkelstein &amp; Partners, on behalf of the 4 Smith family.</p> <p>5 MR. SOH: Ken Soh, from the Lanier 6 Law Firm on behalf of the plaintiffs.</p> <p>7 MS. McGRODER: Lori McGroder, of 8 Shook, Hardy &amp; Bacon, on behalf of Pfizer.</p> <p>9 MS. STEVENSON: Jennifer Stevenson, 10 of Shook, Hardy &amp; Bacon on behalf of 11 Pfizer.</p> <p>12 - - -</p> <p>13 Witness sworn</p> <p>14 - - -</p> <p>15 DIRECT EXAMINATION</p> <p>16 BY MS. McGRODER:</p> <p>17 Q Professor Trimble, good morning.</p> <p>18 A Good morning.</p> <p>19 Q We've met before; correct?</p> <p>20 A Twice.</p> <p>21 Q Good to see you.</p> <p>22 A Thanks.</p> <p>23 Q Thanks for being here.</p> <p>24 I understand your opinion in this case to 25 be that -- and these are your words not mine:</p>	<p>1 So there's sudden spontaneous events 2 that, to a large extent, are unpredicted 3 and not perhaps predictable by a third 4 person. That was the impulsive part.</p> <p>5 The first part was spontaneous, which 6 means happens out of the blue.</p> <p>7 Spontaneous.</p> <p>8 BY MS. McGRODER:</p> <p>9 Q So it's your opinion that Mr. Smith's 10 suicide happened out of the blue?</p> <p>11 MR. FINKELSTEIN: Objection.</p> <p>12 THE WITNESS: It is my opinion that 13 Mr. Smith's suicide happened out of the 14 blue.</p> <p>15 BY MS. McGRODER:</p> <p>16 Q Is there any peer reviewed published 17 literature in the world demonstrating that 18 Neurontin causes impulsive suicide behavior? 19 In other words, suicide that happened out of 20 the blue?</p> <p>21 MR. FINKELSTEIN: Objection.</p> <p>22 THE WITNESS: Could you just rephrase 23 that, because there were two questions 24 embedded into one.</p> <p>25 MS. McGRODER: Well, I don't think</p>
<p>1 "In the absence of a recognizable 2 psychiatric disorder, the spontaneous and 3 impulsive nature of Richard Smith's suicide 4 requires explanation. As outlined in my 5 concurrent report, Gabapentin is associated 6 with changes of brain chemistry, which I find 7 with a reasonable degree of scientific and 8 medical probability, leads to impulsive 9 suicidal acts. It is, therefore, my opinion 10 that it is more likely than not, Gabapentin was 11 a substantial factor in Mr. Smith committing 12 suicide."</p> <p>13 As we sit here today, do you stand by that 14 opinion?</p> <p>15 A I do.</p> <p>16 Q Please define for me what you mean by 17 "spontaneous and impulsive" in nature.</p> <p>18 MR. FINKELSTEIN: Objection as to 19 form.</p> <p>20 THE WITNESS: If something is 21 impulsive, it arises unexpectedly and 22 quite quickly. And impulsive acts often 23 have disastrous consequences. So, uhm, 24 also aggressive acts lead to personal, 25 interpersonal damage.</p>	<p>1 so, but sure, I'll --</p> <p>2 THE WITNESS: Well, the one related 3 to suicidal behavior, and the other 4 related to impulsivity in the same 5 sentence.</p> <p>6 BY MS. McGRODER:</p> <p>7 Q Well, is it your opinion that Mr. 8 Smith's suicidal behavior was impulsive?</p> <p>9 A Yes.</p> <p>10 Q Okay, so my question is: Is there 11 any peer reviewed published literature in the 12 world that demonstrates or states that 13 Neurontin causes impulsive suicidal behavior?</p> <p>14 A Yes.</p> <p>15 Q And can you please identify for me 16 what literature you're referring to?</p> <p>17 A If you look in my report, I cite 18 several references that have to do with 19 impulsive aggressive behavior in patients 20 receiving Gabapentin.</p> <p>21 Q And did those patients commit suicide 22 in the literature to which you are referring?</p> <p>23 A Those patients committed aggressive 24 acts. I haven't read those reports recently, I 25 don't believe they related directly to suicide,</p>

3 (Pages 6 to 9)

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1 you're missing.  
 2 THE WITNESS: It's a single dose?  
 3 This is a single-dose study?  
 4 BY MS. McGRODER:  
 5 Q Yes, let's talk single dose for now.  
 6 A Okay, because that's crucial,  
 7 obviously, but I don't know, uhm -- I don't  
 8 know if that's even been looked at. It  
 9 probably has, but with the short half life, it  
 10 probably would clear within 24 hours.  
 11 Q Is it not important to your opinion  
 12 in the Smith case to know how long it takes for  
 13 Neurontin to clear from the system following  
 14 the last dose?  
 15 A That's a different question, though.  
 16 The question as to what happens when you take a  
 17 single dose is very different to somebody who  
 18 takes multiple doses, because the body becomes  
 19 saturated with the product. And if you stop  
 20 taking the drug, you will still get the product  
 21 emerging from fatty tissue, for example.  
 22 So the delay, when you've been taking the  
 23 drug chronically, is very different.  
 24 Q Okay, let's say you have been taking  
 25 Gabapentin for two months.

1 A Okay.  
 2 Q And you take your last dose.  
 3 A Okay.  
 4 Q How long before there is no  
 5 appreciable Gabapentin in your system?  
 6 A I would say several days, at least.  
 7 Q And on what do you base your opinion  
 8 that it would be several days at least?  
 9 A On what I've just said, that the drug  
 10 has to come out of the body tissue, body  
 11 system. But that is a guess. As far as I  
 12 know, it's not been looked at.  
 13 Q What is the point at which the drug  
 14 would have no clinical effect following last  
 15 ingestion?  
 16 A That is a different question again.  
 17 Q Yes, that's why I asked it.  
 18 A If you have a drug which acts on the  
 19 brain and influences brain neurochemistry, you  
 20 may well have an effect on the central nervous  
 21 system which by far outlasts the effect of the  
 22 amount of the blood, of what's in the blood.  
 23 So once you have got the blood into the  
 24 brain, you're talking again about a different  
 25 system to just looking at what comes out when

1 you stop the drug from the blood stream.  
 2 Q All right, and so my question is  
 3 related to clinical effects. So maybe you  
 4 tried to answer my question and I just didn't  
 5 understand your answer.  
 6 But my question is: How long after your  
 7 last ingestion of Gabapentin would you expect  
 8 there to be any clinical effect -- let's say,  
 9 let's say you're taking Gabapentin for pain  
 10 reduction -- how long after your last dose of  
 11 Gabapentin would you have clinical, the  
 12 clinical effect of pain reduction?  
 13 MR. FINKELSTEIN: Objection.  
 14 I don't know that there's any  
 15 efficacy that it's ever been established  
 16 that Gabapentin has any effect --  
 17 MS. McGRODER: Objection to form is  
 18 fine.  
 19 MR. FINKELSTEIN: -- on pain  
 20 reduction.  
 21 THE WITNESS: I do not know the  
 22 literature on the use of Gabapentin in  
 23 chronic pain.  
 24 BY MS. McGRODER:  
 25 Q All right, well, let's talk about an

1 epileptic, then. Do you know the literature on  
 2 epilepsy and Gabapentin?  
 3 A I do.  
 4 Q Okay, so let's assume that somebody's  
 5 on Gabapentin for epilepsy, and they take their  
 6 last dose.  
 7 A Okay.  
 8 Q They just decide I'm not taking this  
 9 drug anymore.  
 10 A Yup.  
 11 Q They've taken their last dose.  
 12 How long after the last dose will the  
 13 person no longer have seizure control, or have  
 14 the clinical benefit of the drug?  
 15 A As far as I'm aware, if you stop  
 16 Gabapentin, you do not get a rebound of  
 17 seizures, withdrawal seizures.  
 18 What you do get with some other  
 19 anti-epileptic drugs -- the point of that is to  
 20 say that the lingering anti-epileptic effect  
 21 must go on several days.  
 22 Q And is there any literature that  
 23 supports your opinion that there is lingering  
 24 effect that goes on for several days?  
 25 A Well, I have not read a literature

1 that suggests rebound seizures when you stop --  
 2 I'm sorry -- I have not read a literature that  
 3 suggests withdrawal seizures on Gabapentin, and  
 4 I have not read a literature on psychological  
 5 effects, if I could put it like that. In other  
 6 words, like benzodiazepine withdrawal syndrome,  
 7 which, again, suggests that it is cleared  
 8 slowly rather than very rapidly from the brain.  
 9 Q And so you're relying on literature  
 10 that addresses the lack of rebound seizures to  
 11 support an opinion that the clinical effects of  
 12 Neurontin would there be for several days?

13 MR. FINKELSTEIN: Objection.

14 THE WITNESS: Correct, yes. Yes,  
 15 correct.

16 BY MS. McGRODER

17 Q At least in an epileptic population?

18 A In an epilepsy population; correct.

19 Q Other than that, do you have any  
 20 basis for your statement that the clinical  
 21 effects would last for several days following  
 22 your last ingestion of Gabapentin?

23 A Only that that is a general effect of  
 24 drugs that affect the central nervous system,  
 25 that they tend to last, outlast the blood

1 twice a day. And at some point it was  
 2 increased to 300 milligrams three times a  
 3 day.

4 BY MS. McGRODER:

5 Q So is the maximum does that Mr. Smith  
 6 ever ingested 900 milligrams per day?

7 A 900 milligrams a day.

8 Q Did he, in fact, take Neurontin three  
 9 times a day at 300 milligrams?

10 A My understanding is, from the  
 11 depositions, that that was, indeed, the case.

12 Q And what depositions are you relying  
 13 on for your understanding that he, in fact,  
 14 ingested Neurontin three times a day?

15 A The family, depositions particularly,  
 16 I suppose Ruth Smith, but also if I remember  
 17 from what I read yesterday, there was some  
 18 other family members. His daughters, I don't  
 19 know which one it was, would say that he was a  
 20 reliable patient who took medications  
 21 prescribed.

22 Q Did any family member actually  
 23 observe, personally observe Mr. Smith take  
 24 Neurontin ever?

25 A I cannot answer that question.

1 levels.

2 Q When did Mr. Smith take his first  
 3 dose of Gabapentin?

4 A Well, we've already discussed that  
 5 was in my report. Let me go back to the dates.  
 6 (Reviewing document.) I want to get the dates  
 7 in correct. My belief it was the 9th of March.  
 8 The 9th or March 2004.

9 Q And when did he take his last dose?

10 A That I do not know.

11 Q And why do you not know when he took  
 12 his last dose?

13 A Because he -- well, I don't know. I  
 14 have no idea when he took his last dose.

15 Q Is there any information in the  
 16 record, based on your review, that indicates  
 17 when Mr. Smith took his last dose of Neurontin?

18 A No.

19 Q What dose of Neurontin did Mr. Smith  
 20 take?

21 MR. FINKELSTEIN: When?

22 MS. McGRODER: You can tell me if  
 23 it's different every time.

24 THE WITNESS: It appears that he was  
 25 started on that date on 300 milligrams

1 Q You cannot answer because you don't  
 2 know?

3 A It's not within the depositions, I  
 4 don't believe. I don't know is the answer.

5 Q So your testimony is that none of the  
 6 family members have testified to whether they  
 7 personally observed Mr. Smith taking  
 8 Gabapentin?

9 A I would like to be slightly cautious,  
 10 because I read a large number of depositions  
 11 yesterday and I read them in the past, and I  
 12 may be incorrect, but I do not know of any  
 13 deposition which has said that Mr. Smith was  
 14 observed three times a day taking his  
 15 medication, by any family member.

16 Q Well, you read Mrs. Smith's  
 17 deposition a while ago, before you offered your  
 18 report; correct?

19 A That's correct.

20 Q The rest of the depositions you just  
 21 read yesterday; right? That's the testimony  
 22 you gave.

23 A Yes.

24 Q Well, did you reread them, or did you  
 25 read them for the first time yesterday?

1 A Well, I read them for the first time  
2 yesterday.

3 Q Right. And in those depositions you  
4 did you not find any testimony of the family  
5 members wherein they stated I did not  
6 personally observe Mr. Smith take Neurontin,  
7 you didn't see that in those depositions you  
8 read yesterday?

9 MR. FINKELSTEIN: Objection.

10 THE WITNESS: I did not observe or I  
11 did observe?

12 BY MS. McGRODER:

13 Q Did not. Do you want me to restate  
14 the question?

15 A I think so.

16 Q In the depositions that you read  
17 yesterday and in the Ruth Smith deposition that  
18 you read a year ago, you didn't find any  
19 references to family members giving testimony  
20 that they did not personally observe Mr. Smith  
21 take Neurontin?

22 MR. FINKELSTEIN: Objection.

23 THE WITNESS: They did not personally  
24 observe -- I don't recall any family  
25 member saying they did not observe

1 potential factor.

2 Q That's your opinion?

3 A Uh hum.

4 Q Which is fine. I'm talking about  
5 evidence in the record that he actually  
6 ingested Neurontin. And we've talked about  
7 Mr. Smith's deposition, we've talked about  
8 statements that Mr. Smith made, and that  
9 Neurontin was in the home; correct?

10 A Correct.

11 Q Anything else?

12 A Not that I read in the depositions,  
13 no.

14 Q What was Mr. Smith's Gabapentin level  
15 at the time of his suicide?

16 A Sadly -- well, not sadly. The  
17 autopsy never included any biochemical  
18 analysis.

19 Q Well, he didn't have an autopsy; did  
20 he?

21 A Okay, I'm sorry. Blood was not taken  
22 to look to see what -- well, they didn't  
23 measure -- actually it was taken, blood was  
24 taken, but they didn't measure Gabapentin.

25 Q Other than a post-mortem blood

1 Mr. Smith taking Neurontin.

2 BY MS. McGRODER:

3 Q Okay, so the evidence that you have  
4 that Neurontin was, in fact, ingested by  
5 Mr. Smith comes from Ruth Smith's deposition  
6 testimony?

7 A And his own words, of course.  
8 Mr. Smith's own words.

9 Q Okay, and what else? Anything else?

10 A The fact that he had the medication,  
11 not strong evidence, but he had the medication  
12 at his home. And, well, his own words.

13 Q Anything else? I just want to make  
14 sure we've talked about everything that you  
15 believe supports your opinion that he took  
16 Neurontin.

17 A Well, there is also the fact that he  
18 underwent a mental state change, which needs to  
19 be explained -- well, after he went on to the  
20 Gabapentin, which we know ultimately led to his  
21 suicide, so the mental state change, as a  
22 behavioral neurologist, leads me to ask the  
23 questions: What was the trigger factor that  
24 lead to these events? And the alteration of  
25 his mental state has to be included as the

1 screen -- well, let me articulate it  
2 differently.

3 Setting aside a post-mortem blood screen  
4 that doesn't identify Gabapentin -- well,  
5 withdrawn.

6 It's true that you have no evidence as you  
7 sit here today that Mr. Smith had Gabapentin in  
8 his body at the time of his suicide?

9 MR. FINKELSTEIN: Objection.

10 THE WITNESS: There is no evidence  
11 that Mr. Smith had Gabapentin inside his  
12 body in terms of biochemical evidence,  
13 that is correct.

14 BY MS. McGRODER:

15 Q What was Mr. Smith's active serotonin  
16 level at the time of his suicide?

17 A I really am not even going to  
18 counsel -- I'm not going to counsel even  
19 answering that question.

20 Q You don't know?

21 A Of course I don't know.

22 Q You don't know if he had an increased  
23 serotonin level or a decreased serotonin level  
24 at the time of his suicide; do you?

25 A Of course not.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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<p style="text-align: right;">Page 341</p> <p>1 APPEARANCES: 2 3 FINKELSTEIN &amp; PARTNERS 4 436 Robinson Avenue 5 Newburgh, New York 12550 6 BY: ANDREW G. FINKELSTEIN, ESQ. 7 For the Plaintiff 8 800 634-1212 9 10 THE LANIER LAW FIRM 11 Tower 56 12 126 East 56th Street, 6th Floor 13 New York, New York 10022 14 BY: KENNETH SOH, ESQ. 15 For the Plaintiff 16 212 421-2800 17 SHOOK, HARDY &amp; BACON, LLP 18 2555 Grand Boulevard 19 Kansas City, Missouri 64108-2613 20 BY: LORI CONNORS McGRODER, ESQ. 21 For the Defendant 22 816 474-6550 23 24 25 ALSO PRESENT: Adam DiCola, Videographer</p>	<p style="text-align: right;">Page 343</p> <p>1 PROF. MICHAEL TRIMBLE, 2 Institute of Neurology 3 Queen Square 4 London WC1N3CB, 5 having been previously sworn, was 6 examined and testified as follows: 7 8 THE VIDEO OPERATOR: Please standby. 9 We are on the record. My name is 10 Adam DiCola of Veritext Corporate 11 Services. The date today is September 3, 12 2008, and the time is approximately 13 9:16 a.m. This deposition is being held 14 in the office of Lanier Law Firm, located 15 at 126 East 56th Street, New York, New 16 York. 17 The caption of this case is Smith, et 18 al., versus Pfizer, et al., in the United 19 States District Court, District of 20 Massachusetts, Case Number 21 05-CV-11515-PBS. 22 The name of the witness is Professor 23 Michael Trimble. 24 At this time the attorneys will 25 identify themselves and the parties they represent, after which our court reporter, Patricia Sands, will swear in the witness</p>
<p style="text-align: right;">Page 342</p> <p>1 2                   INDEX 3 4 WITNESS                   DIRECT 5 PROFESSOR MICHAEL TRIMBLE 6 7 Ms. McGroder           344 8 9                   EXHIBITS 10 11 NUMBER   DESCRIPTION                   PAGE 12 TRIMBLE 13 14 EXHIBIT 19   Shell report           352 15 EXHIBIT 20   Neurogurgical records   399 16 EXHIBIT 21   UMC notes               404 17 EXHIBIT 22   Juurlink article       455 18 EXHIBIT 23   Police report           482 19 EXHIBIT 24   Medical examiner's report   489 20 EXHIBIT 25   Suicide note           497 21 EXHIBIT 26   Photo                   508 22 EXHIBIT 27   Wood letter           539 23 24 25</p>	<p style="text-align: right;">Page 344</p> <p>1 and we can proceed. 2 MR. FINKELSTEIN: Andrew Finkelstein, 3 on behalf of the Smith family. 4 MR. SOH: Ken Soh, on behalf of the 5 Smith family as well. 6 MS. McGRODER: Lori McGroder, of 7 Shook, Hardy &amp; Bacon, on behalf of Pfizer. 8 MS. STEVENSON: Jennifer Stevenson, 9 of Shook, Hardy &amp; Bacon, also on behalf of 10 Pfizer. 11 THE WITNESS: We did this yesterday. 12 13 CONTINUED DIRECT EXAMINATION 14 BY MS. McGRODER: 15 Q Professor Trimble, you know you're 16 still under oath; correct? 17 A Correct. 18 Q Did you do anything last night to 19 prepare for the continuation of your deposition 20 this morning? 21 A Last night and this morning I read 22 through my bundle of Mr. Smith's notes. 23 Q And those would be the medical 24 records marked as Exhibit -- 25 A The ones that you had yesterday.</p>

2 (Pages 341 to 344)

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1 Q The ones that you brought with you;  
 2 correct?  
 3 A Correct.  
 4 Q I think those were marked as  
 5 Exhibit 12?  
 6 A Correct.  
 7 Q And what of interest did you find in  
 8 the medical records that you brought with you?  
 9 A I was really refreshing my memories  
 10 of the notes. I searched in vain for the  
 11 script that you kindly showed me yesterday,  
 12 which revealed that he had been on  
 13 escitalopram, which I had not seen before. And  
 14 I -- it gave me some comfort.  
 15 Q Did you review that same set of  
 16 medical records before your deposition  
 17 testimony yesterday?  
 18 A Correct.  
 19 Q And then you reviewed them again this  
 20 morning or last night?  
 21 A Well, both.  
 22 Q Okay. What else did you do to  
 23 prepare for your deposition today?  
 24 A Tried to relax, really. I don't  
 25 think I did anything. I didn't do any extra

1 A I was thinking it might be Mr. Hooper  
 2 again.  
 3 Q Were you disappointed?  
 4 A Not at all. Not at all. I don't  
 5 think we discussed anything in specifics, but I  
 6 was given that large bundle of depositions to  
 7 read. And that really consumed the rest of my  
 8 day.  
 9 Q What --  
 10 A But I don't think it was specific in  
 11 terms of preparing for a deposition. I mean,  
 12 this is the fourth deposition I've done, so I  
 13 know what to expect.  
 14 Q Sure.  
 15 A And so there was nothing specific.  
 16 And as far as I know, there was no new  
 17 information that had been brought forward in  
 18 this case, except that bundle of depositions  
 19 which you had, which I then took away and spent  
 20 the rest of the afternoon reading.  
 21 Q Right. And my question really wasn't  
 22 limited to your preparation for how to give a  
 23 deposition, it was what did you do to prepare  
 24 to give a deposition in the Smith matter.  
 25 So what did you discuss with respect to

1 reading or anything like that.  
 2 Q How much time did you spend meeting  
 3 with lawyers for the plaintiffs in preparation  
 4 for your deposition?  
 5 A Between today and yesterday?  
 6 Q No, ever.  
 7 A This deposition?  
 8 Q Yes, of course.  
 9 A I arrived here Sunday, and I was with  
 10 Mr. Soh and Mr. Finkelstein for -- I can't  
 11 remember, but it was a holiday, so I guess it  
 12 was about three hours in the morning maybe.  
 13 Q On Monday the holiday?  
 14 A Monday the holiday, yes.  
 15 Q Okay.  
 16 A I think people were anxious to get  
 17 away for the holiday.  
 18 Q Is that the full extent of meetings  
 19 that you had with lawyers to prepare for your  
 20 deposition?  
 21 A This deposition, that's correct.  
 22 Q Okay. And what did you discuss on  
 23 Monday?  
 24 A Who was going to do this deposition.  
 25 Q What was the speculation?

1 the Smith case?  
 2 A I don't think we discussed anything  
 3 specific, you know, in terms of was there any  
 4 alteration in my opinion or if anything new  
 5 cropped up. I don't think that there was  
 6 anything like that.  
 7 Q Well, generally what did you talk  
 8 about in the Smith case? You did talk about  
 9 the Smith case; correct? I mean, you're here  
 10 to give a deposition about the Smith case.  
 11 A If I recall rightly, that we spent  
 12 quite some time talking about FDA hearing. And  
 13 Mr. Finkelstein -- I had, of course, read it,  
 14 but Mr. Finkelstein had the DVD. And he showed  
 15 me some excerpts from that, because I was  
 16 interested, actually.  
 17 And, ah, we discussed the fact that  
 18 Dr. Katz referred to the causal link between  
 19 taking these antiepileptic compounds and  
 20 suicide. And there was some other snippets  
 21 that he also showed me in relationship to that.  
 22 But I don't -- I don't think there was  
 23 anything particular about the Smith case in  
 24 itself.  
 25 Q Well, just generally then, what did

<p style="text-align: right;">Page 357</p> <p>1 BY MS. McGRODER:</p> <p>2 Q And you see at the end of this note 3 that Dr. Shell concludes that his pain may be 4 coming from his back; correct?</p> <p>5 A Correct.</p> <p>6 Q And that he might benefit from a 7 second opinion and, thus, Dr. Shell recommends 8 that he see Dr. Mackey; correct?</p> <p>9 A That's correct.</p> <p>10 Q Doctor Mackey is a surgeon; right?</p> <p>11 Do you know?</p> <p>12 A I understand that he is, but I can't 13 guarantee that.</p> <p>14 Q So if you turn the page to TOA 004.</p> <p>15 A Yes.</p> <p>16 Q Mr. Smith is back in the office on 17 February 12 for a visit with Dr. Mackey; 18 correct?</p> <p>19 A Correct.</p> <p>20 Q And the record says: "He is status 21 post lumbar laminectomy and fusion, using what 22 appears to be local bone. Last fall he began 23 to have increasing left lower extremity pain."</p> <p>24 Do you see that?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 359</p> <p>1 has not improved despite muscle relaxants and 2 pain medication; correct?</p> <p>3 A That is correct.</p> <p>4 Q And the muscle relaxants and pain 5 medication that he was on, according to the 6 preceding note, include Dextra and Flexeril; 7 right?</p> <p>8 A Correct.</p> <p>9 Q Would you agree with me that despite 10 conservative pain therapy at this point, 11 Mr. Smith's pain was not improving?</p> <p>12 A That's correct.</p> <p>13 Q Would you agree with me that the fact 14 that conservative therapy is not improving his 15 pain at this point, is similar to the 16 circumstances in 2003, where he tried 17 conservative therapy before he received surgery 18 for his back pain?</p> <p>19 A I agree the situation is very 20 similar.</p> <p>21 Q If you will go to page TOA 00015, 22 it's about two pages back.</p> <p>23 A I have that.</p> <p>24 Q This is a February 17, 2004 plan of 25 care.</p>
<p style="text-align: right;">Page 358</p> <p>1 Q "He denies any weakness. The pain 2 has not improved despite muscle relaxants and 3 pain medication."</p> <p>4 A Correct.</p> <p>5 Q So he's reporting the same symptoms 6 to Dr. Mackey; right?</p> <p>7 A With the exception of the razor 8 blades.</p> <p>9 Q Right. But he just says the pain has 10 not improved, so presumably it's the same pain?</p> <p>11 A I don't think you could presume that.</p> <p>12 Q You don't?</p> <p>13 A No.</p> <p>14 Q Well, the pain he reported on the 15 preceding visit to this same office was that he 16 had pain that felt like razor blades; right?</p> <p>17 A He does not state that in this report 18 that you just showed me.</p> <p>19 Q Okay, but my question is: The pain 20 that he reports on the preceding visit to this 21 same office is pain that felt like razor 22 blades; correct?</p> <p>23 A That is correct.</p> <p>24 Q Okay. And this note says that pain</p>	<p style="text-align: right;">Page 360</p> <p>1 A Yes, I have that.</p> <p>2 Q Do you see that?</p> <p>3 A I have that.</p> <p>4 Q And do you see under the "Problems &amp; 5 Goals" under problem number 1, it says: "Chief 6 complaint: Pain. Aggravating factors: 7 Activities Walking 0 to 10 minutes."</p> <p>8 Do you see that?</p> <p>9 A Yes.</p> <p>10 Q Does that tell us that Mr. Smith had 11 pain with activities such as walking 10 minutes 12 or less?</p> <p>13 A That's correct.</p> <p>14 Q Okay. And if you will look at 15 problem number 2, it says: "Chief complaint: 16 Pain. Current Severity: 7 out of 10."</p> <p>17 A Correct.</p> <p>18 Q Right?</p> <p>19 A That's correct.</p> <p>20 Q And so thinking back to the spring of 21 2003, before he had lumbar laminectomy surgery, 22 he rated his pain 8 on a scale of 1 to 10. Do 23 you recall that?</p> <p>24 A Yes.</p> <p>25 Q And here he is rating his pain 7 on a</p>

1 surgery and he can't have surgery?  
 2 MR. FINKELSTEIN: Objection.  
 3 THE WITNESS: According to  
 4 Dr. Mackey, that is correct.  
 5 BY MS. McGRODER:  
 6 Q And Dr. McCombs?  
 7 A Yes, and McCombs, that is correct.  
 8 Q Did you consider the fact that  
 9 Mr. Smith was no longer a candidate for surgery  
 10 to help his pain in 2004 when you formed your  
 11 opinions in this case?  
 12 A My understanding is that he was  
 13 actually scheduled to see yet another surgeon  
 14 the day after he died, Dr. Chang, I think it  
 15 was. So his searching for another opinion had  
 16 not ceased.  
 17 Q Okay. That wasn't my question. My  
 18 question was: Did you consider the fact that  
 19 Mr. Smith was told by two surgeons in March  
 20 of 2004 that he was no longer a candidate for  
 21 surgery to help him with his pain when you  
 22 formed the opinions that you came to in this  
 23 case?  
 24 A Not especially, no.  
 25 Q That wasn't important to your

1 Q Yes, April 15, 2004. The note says:  
 2 "Per Dr. Berklaich, do not --"  
 3 A Reschedule.  
 4 Q "-- reschedule appointment".  
 5 A Yes.  
 6 Q Do you know what that's about?  
 7 A No.  
 8 Q If you -- did you read the deposition  
 9 of Dr. Berklaich?  
 10 A Yes.  
 11 Q Did you take any notes other than the  
 12 notes in Exhibit 2 on the basis of your review  
 13 of depositions?  
 14 A No.  
 15 Q Did you make notes in the depositions  
 16 themselves?  
 17 A No.  
 18 (Exhibit 20 marked for  
 19 identification.)  
 20 Q I'm going to hand you now, Professor  
 21 Trimble, what we're marking as Exhibit 20 to  
 22 your deposition.  
 23 A Okay.  
 24 Q If you would look the third to the  
 25 last page.

1 opinion?  
 2 MR. FINKELSTEIN: Objection.  
 3 THE WITNESS: Not especially, no.  
 4 BY MS. McGRODER:  
 5 Q Okay, if you go to Exhibit 15, page  
 6 FMB 52, which is an April 15, 2004 note.  
 7 A Right.  
 8 Q Let me give you the actual exhibit.  
 9 Here, use this.  
 10 A Yeah. I'll give you that back.  
 11 Q These are the medical records of  
 12 Dr. Berklaich.  
 13 A Right.  
 14 Q I'm sure we're butchering that name,  
 15 but that's the best I can do.  
 16 A Okay.  
 17 Q And look for April 15, 2004.  
 18 MR. FINKELSTEIN: What's the Bates  
 19 number?  
 20 MS. McGRODER: It is FMB 52, actually  
 21 it's the last page.  
 22 THE WITNESS: Oh, the very bottom.  
 23 BY MS. McGRODER:  
 24 Q Yes.  
 25 A 15 4 04, yes.

1 MR. FINKELSTEIN: Just so --  
 2 MS. McGRODER: I'm getting there.  
 3 MR. FINKELSTEIN: I mean, all I want  
 4 you to do is establish it was already an  
 5 exhibit. That's all.  
 6 BY MS. McGRODER:  
 7 Q These are records of Neurosurgical  
 8 Associates. Do you see that?  
 9 A I do.  
 10 Q And there is an exhibit reference at  
 11 the top on the front page that says Exhibit 1,  
 12 if you look on the very front.  
 13 A Yes.  
 14 Q And that exhibit reference does not  
 15 relate to this deposition?  
 16 A Okay.  
 17 Q Just for the record, that relates to  
 18 the deposition of Ruth Smith where this exhibit  
 19 was used.  
 20 A Okay.  
 21 Q Okay. And turning to the third to  
 22 the last page, you will see that this is a copy  
 23 of Dr. McCombs record.  
 24 A Yes. Yes, I have that.  
 25 Q Okay.

1 A We discuss discussed this already.  
 2 Q Yes, yes, we did.  
 3 A Yes.  
 4 Q And this copy has handwriting on it?  
 5 A Yes.  
 6 Q That we've been told is Mr. Smith's  
 7 handwriting; right?  
 8 A Correct.  
 9 Q And we talked about that a little  
 10 yesterday, do you recall?  
 11 A Correct.  
 12 Q That there was some medical records,  
 13 and I think you your testimony you don't know  
 14 why Mr. Smith got his medical records or wrote  
 15 on them?  
 16 A Correct.  
 17 Q And in this record, it says -- there  
 18 is a circle around the word Dr. Howell.  
 19 A Correct.  
 20 Q And then there is an arrow that goes  
 21 down to the handwritten note.  
 22 A That's correct.  
 23 Q By Mr. Smith. And the note says,  
 24 which is consistent with your testimony, "I  
 25 have never seen Dr. Howell"; right?

1 Dr. Hampf and Dr. Berklaich stating in the  
 2 record they will not reschedule an appointment  
 3 with Mr. Smith?  
 4 A That's correct.  
 5 Q Do you know what Mr. Smith's reaction  
 6 was to that?  
 7 A No.  
 8 Q Based on the handwritten note of  
 9 Mr. Smith, do you think he wanted to see  
 10 Dr. Hampf?  
 11 MR. FINKELSTEIN: Objection.  
 12 THE WITNESS: He was seeking more, he  
 13 was still seeking more opinions and he  
 14 does discuss Dr. Hampf in that handwritten  
 15 note.  
 16 BY MS. McGRODER:  
 17 Q And Dr. Hampf is a surgeon; right?  
 18 A I do not know. I accept that he may  
 19 be, but I do not know.  
 20 Q Okay. And this also is different  
 21 from Mr. Smith's experience in the spring of  
 22 2003; correct?  
 23 A In the sense that --  
 24 Q In the sense that in 2003 Mr. Smith  
 25 did have the opportunity to go and see

1 A That's correct.  
 2 Q And then it says: "Dr. Mackey called  
 3 and said that Dr. Howell would not see me,  
 4 because I had seen Dr. Hampf, February 27th,  
 5 2003, and did not let him do my surgery".  
 6 Do you see that?  
 7 A Yes, I do.  
 8 Q And then the next note is: "I pray  
 9 that Dr. Hampf will consider seeing me and  
 10 giving me his opinion".  
 11 Do you see that?  
 12 A That's correct.  
 13 Q Did you know that Dr. Hampf was  
 14 affiliated with Dr. Berklaich?  
 15 A No.  
 16 Q Dr. Hampf is Dr. Berklaich's  
 17 partner, did you know that?  
 18 A I didn't know that.  
 19 Q So looking back now to Exhibit 15, on  
 20 the last page. The record that we were looking  
 21 at that says --  
 22 A Yes.  
 23 Q "Do not reschedule an appointment".  
 24 A Yes.  
 25 Q Are you aware that refers to

1 Dr. Berklaich and Dr. Hampf to get an opinion  
 2 about surgery; right?  
 3 A That's correct.  
 4 Q Now, in 2004, Mr. Smith is still  
 5 experiencing severe pain, and he does not have  
 6 the opportunity to go in and see Dr. Hampf and  
 7 Dr. Berklaich for an opinion about surgery;  
 8 correct?  
 9 MR. FINKELSTEIN: Objection.  
 10 THE WITNESS: That's correct.  
 11 MS. McGRODER: We are now marking,  
 12 Professor Trimble, notes from the  
 13 University Medical Center as Exhibit 21.  
 14 (Exhibit 21 marked for  
 15 identification.)  
 16 BY MS. McGRODER:  
 17 Q Do you recognize these notes?  
 18 A (Referring to document.) They have a  
 19 familiarity.  
 20 Q Do you think you have seen these  
 21 before?  
 22 A I only said that because there's a  
 23 lot of them look the same.  
 24 Q Format?  
 25 A If you would like to take me to the

1 Mr. Smith's ability to self manage his pain, or  
2 cope with his pain?

3 A Well, it tells me that he is moving  
4 in the right direction and getting better. If  
5 I could refer back.

6 Q Well, this is talking about how he  
7 felt after today's treatment in terms of his  
8 pain; right?

9 A And it says that he's mobilizing  
10 better.

11 Q Where does it say that?

12 A Didn't we just read that?

13 Q Well, after ROM mobility, what does  
14 that say?

15 A I thought this said that his mobility  
16 was --

17 Q I simply don't know.

18 A Increased -- there is an arrow which  
19 says increased.

20 Q I see that.

21 A And then "mobility noted".

22 Q What is the word after "increased"?

23 A I think it says "dressing".

24 Q Increased dressing?

25 A Could be.

1 Q Okay, that's my question. So this  
2 page, UMC 082, doesn't address -- well, first  
3 it doesn't say that Mr. Smith is not having  
4 pain; right?

5 It just says his pain has improved after  
6 this physical therapy treatment?

7 A Correct.

8 Q And secondly, it doesn't say anything  
9 about his ability to cope with his pain;  
10 correct?

11 A That is correct. That is correct.

12 Q Anything else?

13 A Thirtieth of April. Fourth of May,  
14 Pain Center physiotherapy services.

15 MS. McGRODER: Professor Trimble,  
16 before we discuss this record we are about  
17 to run out of videotape.

18 THE WITNESS: Okay.

19 MS. McGRODER: Let's just take a  
20 short break.

21 MR. FINKELSTEIN: We're running an  
22 hour and fifteen, why don't we just take a  
23 break?

24 MS. McGRODER: Perfect.

25 THE VIDEO OPERATOR: Please standby.

1 Q Mobility noted? So he might be able  
2 to dress himself after this physical therapy  
3 treatment?

4 A That suggests to me that he is moving  
5 forwards and getting better.

6 Q Now, my question to you, before you  
7 move on is: Is there anything on UMC 082 that  
8 talks about Mr. Smith's ability to cope with  
9 his pain?

10 A Well, may I just --

11 Q First you need to answer my question  
12 about UMC 082, then you can talk about what you  
13 want to talk about, but first answer my  
14 question.

15 A There's nothing about coping there.

16 Q Okay.

17 A But I'm just looking for the word  
18 "coping" in the reference that you previously  
19 showed me.

20 Q Well, we already discussed what HEP  
21 stood for; right?

22 A Well, it's help; isn't it? But I  
23 don't see the word "coping" on that page.

24 Q Okay.

25 A That's what I'm saying.

1 We are going off the record, the time  
2 is 10:37 a.m. This concludes videotape  
3 number 1.

4 (Recess.)

5 THE VIDEO OPERATOR: Please standby.  
6 We are back on the record, the time  
7 is 10:59 a.m. This is the beginning of  
8 tape number 2.

9 BY MS. McGRODER:

10 Q Professor Trimble, we left off  
11 talking about the physical therapy records from  
12 the University Medical Center in Exhibit 21.

13 Were you able to find any record among  
14 this set that states Mr. Smith did not -- that  
15 states Mr. Smith was coping well with his pain?

16 A Well, the word "coping" does not  
17 appear in any of these records.

18 Q Okay. If I could turn your attention  
19 to UMC 0076.

20 A (Referring to document.)

21 Q That would be about three pages from  
22 the back. You know what, use the exhibit, if  
23 you don't mind.

24 A Yes.

25 Q That might be easier.

<p style="text-align: right;">Page 425</p> <p>1 A Yes.  2 Q Use this one. And using your set of  3 records.  4 A Sorry, which was this number?  5 Q 0076 -- no, I'm sorry, 076.  6 A Yes.  7 Q This record is dated May 4, 2004.  8 A Yes.  9 Q And at the top right, you see that  10 there is a pain scale there of 0 to 10?  11 A That's correct.  12 Q And 7-8 says "excruciating"; right?  13 A Yes.  14 Q And 7-8 on the pain scale is checked  15 marked; correct?  16 A That's correct.  17 Q Okay, so the assessment of Mr. Smith  18 on May 4, 2004 is excruciating pain?  19 A That's correct.  20 Q And the quality of his pain is  21 checked as sharp; right?  22 A Correct.  23 Q And then there is an arrow that says  24 "down to knee".  25 A Correct.</p>	<p style="text-align: right;">Page 427</p> <p>1 Q Okay. And if you turn two more  2 pages.  3 A Well, can we finish that notation?  4 "Felt good."  5 Q Right, "after last visit".  6 A "After last visit".  7 Q Difficult to sleep.  8 A Difficulty to sleep.  9 Q Okay, anything else you want to talk  10 about on that?  11 A Not on that page.  12 Q All right. Then let's turn to  13 page 74, go two more pages.  14 A (Referring to document.) This is  15 moving on a bit in time.  16 Q Yes, it is. And we'll come back and  17 fill in the blanks, but on this physical  18 therapy note, this is actually two days later,  19 it's dated May 6, 2004?  20 A Uhm hum.  21 Q And it says "no change in pain";  22 right?  23 A Correct.  24 Q So we can assume that since he was  25 seen on May 4, and now it's two days later on</p>
<p style="text-align: right;">Page 426</p> <p>1 Q And if you look at the little diagram  2 of the human body to the left, it says "knees  3 and ankles hurt left and right".  4 A That's correct.  5 Q You know what, maybe that's left is  6 greater than right?  7 A It's probably left greater than  8 right, yes.  9 Q In any event, they apparently both  10 hurt?  11 A That's correct.  12 Q And then on other -- it appears to  13 say doing backbends?  14 A That's correct.  15 Q Okay. And then it says: "No  16 triangle in pain". That triangle means change;  17 correct?  18 A I take this to mean that he gets no  19 change in his pain when he does backbends.  20 Q Right. And would that be the pain  21 that's reported as excruciating in the box on  22 the upper right?  23 A Yes.  24 Q Okay.  25 A Well, I accept that's probably right.</p>	<p style="text-align: right;">Page 428</p> <p>1 May 6th and the note says "no change in pain"  2 that Mr. Smith is still experiencing  3 excruciating pain?  4 A That's one interpretation. The other  5 interpretation is that his pain had been  6 getting better because of what we have just  7 read. His flexibility was getting better.  8 And that he was, if we look at page 00077,  9 "Pain tolerated by today's treatment good".  10 His irritation is said to be moderate. His  11 mobility is said to be increasing with increase  12 lumbar extension noted. Pelvic alignment good.  13 And his strength and endurance, I read that as  14 good, but it's a little unclear what it is.  15 Q I read that as down arrow apostrophe  16 D, decreased?  17 A I don't read it as that. I don't see  18 an arrow.  19 Q You don't see that first line as an  20 arrow pointing down?  21 A No.  22 Q Well, it certainly doesn't say the  23 word "good"?.  24 A You see, I accept -- well, I think  25 we'll have to accept an ambiguity. The other</p>

23 (Pages 425 to 428)

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1 are filling out the discharge summary. And  
 2 it's dated 6/30, but this reports the same  
 3 thing as we just read in the May 6, 2004 note;  
 4 correct?

5 A I will accept that.

6 Q And then it says under "Comments:  
 7 Patient voiced concern that something serious  
 8 is going on". Do you see that?

9 A Yes.

10 Q He's going to another neurologist;  
 11 right?

12 A Correct.

13 Q Mr. Smith was concerned at some point  
 14 after May 6, 2004 when he asked to be  
 15 discharged and before his death, that something  
 16 very serious was going on. You don't disagree  
 17 with that; right?

18 MR. FINKELSTEIN: Objection.

19 THE WITNESS: By this point in time  
 20 he was taking Neurontin.

21 BY MS. McGRODER:

22 Q And this note doesn't say anything  
 23 about Neurontin; does it?

24 A At this point in time he was taking  
 25 Neurontin.

1 Q That's not my question, Professor  
 2 Trimble. Did you hear my question?

3 A Would you repeat the question.

4 Q Yes. My question is: There is  
 5 nothing in this note about taking Neurontin?

6 A That is correct.

7 Q And at this point in time, sometime  
 8 after May 6 and sometime before he dies, he is  
 9 reporting to the therapist, presumably on May  
 10 6, because that's the last time they saw him,  
 11 that he's concerned that something serious is  
 12 going on with his health; right?

13 A Something serious is going on, I don't  
 14 think --

15 Q Well, what's his health problem,  
 16 Professor Trimble?

17 A Well, he says something serious is  
 18 going on.

19 Q Yes, he does.

20 A It does not say anything about  
 21 serious going on with his health.

22 Q Okay. All right, then. Can you  
 23 please turn to Exhibit number 18.

24 A Can I give you that one back.

25 Q Put it in the pile.

1 A Okay.  
 2 Q Do you have Exhibit 18 in front of  
 3 you?  
 4 A No, I don't think --  
 5 Q (Referring to documents.) There you

6 go.  
 7 A Thank you. (Referring to document.)  
 8 Q Now, if you will turn to page 006,  
 9 DPM 006, just the third to the last page.

10 A Okay.  
 11 Q By the way --

12 A We've seen this one before.  
 13 Q Well, we have seen -- we have talked  
 14 about the top two notes, we haven't talked  
 15 about the handwritten note at the bottom.  
 16 Okay?

17 A Yes.  
 18 Q Have you ever seen that handwritten  
 19 note before?

20 A Yes.  
 21 Q All right. Did you take into  
 22 consideration, when forming your opinion in  
 23 this case, that Mr. Smith, at or around May 6,  
 24 2004 was concerned that something serious was  
 25 going on?

1 physical health and his pain --  
 2 A Uh hum.  
 3 Q Why would he be telling the physical  
 4 therapist that he was going to see a  
 5 neurologist?  
 6 MR. FINKELSTEIN: Objection.  
 7 THE WITNESS: Oh, I think he was  
 8 concerned to get further treatment. And  
 9 as we know, he had made plans to see  
 10 somebody else the day after he died.  
 11 BY MS. MCGRODER:  
 12 Q And that person was a neurologist;  
 13 right?  
 14 A That person was either -- well,  
 15 neurologist or neurosurgeon, yes.  
 16 Q Okay.  
 17 A But I don't know exactly, yes.  
 18 Q Okay. On the 5/5/04 note in  
 19 Exhibit 18 the handwriting says "Patient  
 20 called, complaint of pricking".  
 21 Do you see that?  
 22 A Yes.  
 23 Q Slash "sticking feeling in buttock  
 24 and legs. He states that he is taking Advil,  
 25 Neurontin, Lortab with no relief"; right?

1 A Correct.  
 2 Q So the conservative therapy he's  
 3 getting, including his physical therapy, is not  
 4 give him any relief; right?  
 5 A That's correct. In this note.  
 6 Q And the next line says: "He is  
 7 having physical therapy at present, but that  
 8 hasn't helped so far"; right?  
 9 A Correct.  
 10 Q So right now with conservative  
 11 therapy, including medications and physical  
 12 therapy, he is not getting any pain relief?  
 13 A That is incorrect.  
 14 Q The last recorded pain scale reported  
 15 by Mr. Smith on May 6, 2004, states that he is  
 16 rating his pain at a scale of 7-8, which is  
 17 characterized as excruciating pain; correct?  
 18 A That is correct.  
 19 Q Is there any other pain scale after  
 20 May 6 2004 in which Mr. Smith rates his pain?  
 21 A Not that I know of.  
 22 Q Okay. And then the next part of the  
 23 May 5, 2004 note says "ESI --" we have talked  
 24 about that; right?  
 25 A Those are the, probably the facet,

1 F-A-C-E-T, injections.  
 2 Q Well, in fact, they are epidural  
 3 steroid injections; right?  
 4 A Yes.  
 5 Q That's what ESI stands for?  
 6 A Yes.  
 7 Q "ESI has been authorized by  
 8 George --" something -- "but patient does not  
 9 want to do that now"; right?  
 10 A Correct.  
 11 Q "Will call back if he decides to take  
 12 advantage of ESI at later date".  
 13 A Correct.  
 14 Q Correct?  
 15 A That's correct.  
 16 Q There is one more line on this  
 17 handwritten note. And you can see a trace of  
 18 it at the bottom.  
 19 A Yeah, I have never seen the --  
 20 Q You've never seen it?  
 21 A No.  
 22 Q Nor I. Is it possible that Mr. Smith  
 23 thought an epidural steroid injection would not  
 24 help him?  
 25 A It's possible.

1 Q Are these statements made on May 5,  
 2 2004 similar to the statements he made in March  
 3 of 2003 before he had lumbar surgery?  
 4 A There is a similarity there, yes.  
 5 Q Did you consider the fact that  
 6 Mr. Smith called his physician on May 5, 2004  
 7 to report that he was in pain, and that his  
 8 medications, his physical therapy were not  
 9 helping him when you formed your causation  
 10 opinion in this case?  
 11 A I did. Yes, I did.  
 12 Q And if you turn to Exhibit 20.  
 13 A (Referring to document.)  
 14 Q The second to the last page.  
 15 A (Referring to document.)  
 16 Q These are the handwritten notes of  
 17 Mr. Smith on his medical records.  
 18 A Yes.  
 19 Q Now, let me just ask you something  
 20 timing wise. If you turn to the second to the  
 21 last page.  
 22 A Excuse me, I'm not --  
 23 Q Go one more page.  
 24 A This one here?  
 25 Q There you go.

1 A Yes.  
 2 Q May 5, 2004?  
 3 A Yes.  
 4 Q That's the same date as the record we  
 5 just read --  
 6 A That's correct.  
 7 Q -- from Dr. McComb's office; correct?  
 8 A That's correct.  
 9 Q And it says "Called to Gloria at  
 10 McCombs about pricking. She called back, they  
 11 have nothing to offer but injections at White  
 12 Bridge Road".  
 13 A Correct.  
 14 Q So Mr. Smith understood that the  
 15 doctor's office had nothing to offer him except  
 16 these steroid injections?  
 17 A That's correct.  
 18 Q And so this note is written on  
 19 5/5/04, the same day he makes the phone call.  
 20 And if you go to the preceding page, it's  
 21 written after the March 31, 2004 note; correct?  
 22 A That's correct.  
 23 Q So would you assume from this that  
 24 Mr. Smith obtained his medical record at some  
 25 point after March 31, 2004?

1 A Yes.  
 2 Q Okay. And then the last note he  
 3 makes, is the same day he makes the phone call  
 4 to McComb's office?  
 5 A That's correct.  
 6 Q And the McCombs record isn't included  
 7 in this set in Exhibit 20; right?  
 8 A That's correct.  
 9 Q Did you consider when you formed your  
 10 causation opinion in this case about Neurontin,  
 11 that Mr. Smith learned on May 5, 2004 that  
 12 McCombs office has nothing to offer him except  
 13 epidural steroid injections?  
 14 A I did.  
 15 Q Do you believe, do you have the  
 16 opinion today that Mr. Smith had severe chronic  
 17 pain on May 5, 2004?  
 18 A He was continuing to suffer from  
 19 chronic pain, that's correct.  
 20 Q Had Mr. Smith had epidural steroid  
 21 injections in the past?  
 22 A I don't believe so, but I may be  
 23 incorrect. I don't believe he had.  
 24 Q Did you go back to look to see  
 25 whether the epidural steroid injections

1 Mr. Smith had in the past were helpful to him?  
 2 MR. FINKELSTEIN: Objection.  
 3 THE WITNESS: Being not orthopaedic  
 4 and not even being certain of the exact  
 5 meaning of those terms, I do not have a  
 6 comment to make about his epidural steroid  
 7 injections.  
 8 BY MS. McGRODER:  
 9 Q Well, you did not go and look up what  
 10 an epidural steroid injection is before you  
 11 gave your opinions in this case?  
 12 A I know what they are, but I'm not an  
 13 orthopaedic expert, and I have no idea of the  
 14 expectations of those treatments, or, indeed,  
 15 how they are given.  
 16 Q Did you look through the medical  
 17 records of Mr. Smith to determine whether he  
 18 ever got any relief whatsoever from an epidural  
 19 steroid injection?  
 20 A I do not know if he ever had any  
 21 relief from an ESI.  
 22 Q And that was not important to your  
 23 consideration of what the cause was of  
 24 Mr. Smith's suicide?  
 25 A No.

1 that appointment?

2 A I do not know who made the  
3 appointment.

4 Q Do you know whether Mr. Smith wanted  
5 to go to the appointment?

6 A I do not know whether Mr. Smith  
7 wanted to go to the appointment.

8 Q Do you know who found the  
9 neurosurgeon, Dr. Chang, for Mr. Smith to see?

10 A I think it was a family member, but I  
11 do not know exactly who it was. In the  
12 depositions that I read, I remember somebody  
13 referring to it, but I don't know which family  
14 member it was.

15 Q You were not aware, then, that it was  
16 his daughter, Gail, who identified Dr. Chang as  
17 a possible physician for Mr. Smith to see?

18 A I have just said it was within the  
19 depositions that I read the other day, and it  
20 was a family member, one of his daughters.  
21 Maybe she had heard of this person from  
22 somebody else. Does that sound right? It was  
23 a family member anyway.

24 Q Do you know whether it was Gail who  
25 made the appointment with Dr. Chang?

1 know, think back on Mr. Smith's medical  
2 history, when he --

3 A Yes.

4 Q -- has full knee replacements, full  
5 hip replacements, lumbar surgery, surgery on,  
6 ah, a hernia repair, in Mr. Smith's medical  
7 history, would you agree would me that the best  
8 treatment Mr. Smith had and the ones he found  
9 most effective were surgical?

10 MR. FINKELSTEIN: Objection.

11 THE WITNESS: He got relief from his  
12 surgical interventions, that is correct.

13 BY MS. McGRODER:

14 Q Would you agree with me that  
15 Mr. Smith felt hopeless after he learned that  
16 surgery was not an option?

17 MR. FINKELSTEIN: Objection.

18 THE WITNESS: The term "hopeless" is  
19 reflecting on Mr. Smith's mental state,  
20 and it may well be that he had an  
21 alteration of his mental state at this  
22 time, and that helplessness was a part of  
23 that.

24 BY MS. McGRODER:

25 Q Would you agree with me that

1 A No, I don't.

2 Q On May 5, 2004, when Mr. Smith makes  
3 this handwritten notation, you agree that his  
4 understanding was he was not a candidate for  
5 surgery?

6 A That's correct.

7 Q In the past, at any time when  
8 Mr. Smith had orthopaedic or neuropathic joint  
9 and pain problems, did he ever find relief from  
10 conservative therapy?

11 MR. FINKELSTEIN: Objection.

12 THE WITNESS: Well, I have just taken  
13 you through some references where he was  
14 getting relief from his physical therapy  
15 in the two weeks prior to his death.

16 BY MS. McGRODER:

17 Q And those are the records that we  
18 just talked about --

19 A Correct.

20 Q -- where Mr. Smith in the end said  
21 you know what, these don't help me after I  
22 leave here, and so I want to discontinue;  
23 correct?

24 A That is correct.

25 Q Okay. And so now I'm talking, you

1 Mr. Smith believed or perceived his pain to be  
2 severe and unrelenting between January of 2004  
3 and May 13, 2004?

4 A I have emphasized that there were  
5 fluctuations in the way that he perceived his  
6 treatments, and also there were fluctuations in  
7 the severity of his pain.

8 Q Would you agree with me that  
9 Mr. Smith considered his pain as excruciating  
10 on the last medical record in which his pain is  
11 described?

12 A That is correct.

13 Q And the date of that record is May 4,  
14 2004?

15 A That is correct.

16 Q Are you aware, Professor Trimble,  
17 that the peer reviewed literature states that  
18 the presence of one or more chronic pain  
19 conditions is uniquely associated with suicide  
20 ideation and suicide attempts?

21 MR. FINKELSTEIN: Objection.

22 THE WITNESS: I think yesterday I  
23 have made it clear that pain, in and of  
24 itself, cannot be considered a risk factor  
25 for suicide.

1 MS. McGRODER: I'm handing you now  
 2 what we have marked as Exhibit 25, which  
 3 is the suicide note.

4 (Exhibit 25 marked for  
 5 identification.)

6 THE WITNESS: Thank you.

7 BY MS. McGRODER:

8 Q Could you please read the suicide  
 9 note into the record.

10 A The first sentence has most of the  
 11 letters underlined. "Pain has taken over my  
 12 mind and body".

13 Q Can I stop you, I'm sorry, Professor  
 14 Trimble. Can you just hold that suicide letter  
 15 up, and show the jury. Just next to your face,  
 16 so they can see it, that's fine.

17 A (Witness complies.)

18 Q Thank you. And so that they can see  
 19 how that first sentence "Pain has taken over my  
 20 mind and body" is underlined. Okay, thank  
 21 you.?

22 MR. FINKELSTEIN: Okay, you can read.

23 A "I need back surgery. Left and right  
 24 rotator cuffs, right bicep torn, back surgery  
 25 to correct pain in the legs. Forgive me, I

1 A It depends on what time you're used  
 2 to getting out of bed. But my understanding is  
 3 this family were early risers.

4 Q So Mr. Smith might have written this  
 5 note at 3:00 a.m.?

6 A He might have written it at 3:00 a.m.  
 7 Q Might he have written it at 2:00  
 8 a.m.?

9 A He says I have talked to God all  
 10 night.

11 Q So maybe 2:00 a.m. is too early?  
 12 A I would have thought so.

13 Q So Mr. Smith committed suicide at  
 14 approximately 5:00 a.m.; correct?

15 A Correct.

16 Q So it's possible that Mr. Smith, you  
 17 would agree with me, wrote this note as much as  
 18 two hours before he committed suicide?

19 A That's possible.

20 Q If he wrote the note two hours before  
 21 the suicide, does that suggest the presence of  
 22 impulsivity or absence of impulsivity?

23 A Presence, I would consider.

24 Q So an impulsive suicide can be  
 25 considered, in your opinion, for two hours

1 cannot go on like this. I cannot have my body,  
 2 the temple of the holy spirit, cut on any more.  
 3 I have talked to God all night, and he  
 4 understands".

5 Q Does the fact that Mr. Smith wrote a  
 6 suicide note suggest absence of impulsivity or  
 7 presence of impulsivity?

8 MR. FINKELSTEIN: Objection.

9 THE WITNESS: In terms of the timing  
 10 of it, it implies that he wrote this in  
 11 the morning of his suicide. It was done  
 12 immediately prior to his suicide. So that  
 13 would suggest the impulsivity of it all.

14 BY MS. McGRODER:

15 Q And how do you know that he did it  
 16 immediately prior to his suicide?

17 A Well, he had talked to God all night,  
 18 and his suicide was in the very early morning.

19 Q So is it possible he wrote the

20 suicide note at 4:00 a.m.?

21 A It's possible.

22 Q Is that early in the morning?

23 A It's early in the morning.

24 Q What about 3:00 a.m., is 3:00 a.m.

25 early in the morning?

1 prior to the suicide?

2 A Well, he -- that's a time scale you  
 3 have given me, two hours would be fine. To  
 4 assume that things were reaching a peak, and he  
 5 writes the suicide note, and --

6 Q Well, how long -- I'm sorry. Were  
 7 you finished?

8 A Then he goes on and does it.

9 Q How long before a suicide --  
 10 withdrawn.

11 If a person who is contemplating  
 12 suicide -- withdrawn.

13 With a person who is contemplating  
 14 suicide, how long before the suicide can the  
 15 impulse last, in your opinion?

16 MR. FINKELSTEIN: Objection.

17 THE WITNESS: I really don't know.

18 Impulsivity implies actions coming  
 19 out of the blue, but it doesn't  
 20 necessarily imply an immediate time.  
 21 Obviously, it implies some time  
 22 restriction, but the word "impulsive"  
 23 doesn't necessarily imply everything  
 24 happens instantaneously within 5 minutes.